IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.110 OF 2006
WITH
CONTEMPT PETITION NO.189 OF 2006

Makarand D. Sugavkar. ..Petitioner.

V/s.

Shri Sai Neketan Co-op. Housing Society Ltd. and Ors. ..Respondents.

Mr.M.D.Sugavkar for petitioner.

Mr.Kishore M. Jawle for respondent Nos.1 to 6.

Mr.Khadapkar, AGP for respondent No.7.

CORAM: A.M.KHANWILKAR,J
DATE : AUGUST 7, 2006.

P.C. :

1. Heard counsel for the parties. Perused the pleadings and documents on record.

2. In this petition, grievance is made about wilful disobedience of the order passed by the Maharashtra State Cooperative Appellate Court, Mumbai dated 10th February, 2006 below Application dated 6.2.2006 in Appeal No.56 of 2005. Interim relief granted by the Appellate Court on 10th February, 2006 is in the following terms.

> ". Notice of the application be issued to the respondents/their advocates returnable on Monday the 13th February, 2006. Office

> bearers of respondent No.1 society are hereby directed to maintain status-quo against the recovery of alleged amount of Rs.88,008/- from the appellant till then."

3. The grievance of the petitioner is that inspite of this injunction the respondents/contemnors raised demand bill on 15th February, 2006 calling upon the petitioner to pay sum of Rs.89,812/- within the specified time, failing which to pay interest at the rate of 21% per annum. However, after examining pleadings on record it transpires that the original stay granted in favour of the petitioner on 9th August, 2005 came to be vacated on 1st February, 2006. Thereafter, the petitioner took out application dated 6th February, 2006 for interim relief in relation to the action of recovery of outstanding amount pending against him. That application was heard on 8th February, 2006. No orders were passed on that date, as the petitioner did not press for that application. However, the order which has been passed on 10th February, 2006 was exparte in absence of the respondents. It is in this backdrop, it is contended, the respondents sent demand bill to the petitioner under the signature of the Treasurer dated 15th February, 2006 without knowledge of the order passed on 10th February, 2006. It is the specific case of the respondent that the

respondent became aware about the order dated 10th February, 2006 only on 17th February, 2006.

4. Taking over all view of the matter, in my opinion, this is not a case for proceeding against the respondents/contemnors. This is so because interim protection which was granted to the petitioner was vacated on 1st February, 2006. Thereafter, the demand bill was prepared on 9th February, 2006 which was signed on 15th February, 2006 by the Treasurer. It is seen that when the order was passed on 10th February, 2006, the respondents did not appear before the court. The case of the respondent is that they became aware of the order only on 17th February, 2006. That stand will have to be accepted as it is. In any case, the respondents have assured before this court that they shall not proceed with the demand bill though raised, having regard to the order dated 10th February, 2006. In other words, till the interim protection given under 10th February, 2006 operates, respondents/contemnors shall not precipitate the matter unless the said order is to be modified or vacated subsequently. Assurance given by the respondent through counsel in the above terms is accepted. This statement is made by the counsel for

the respondents on instructions of respondents/-contemnors who are present in the court. Accordingly, this petition is disposed of. Notice issued to the respondents/contemnors discharged.

5. In so far as Contempt Petition No. 189 of 2006 is concerned, the grievance is that in one of the communication sent by the respondents on 9th March, 2006 in paragraph-5, it is observed that the petitioner will be given opportunity to participate in the meeting, if he would clear outstanding dues. Relying on this observation in letter dated 9th March, 2006, counsel for the petitioner would contend that it amounts to wilful defiance of the order of the Court dated 10th February, 2006, as also 27th March, 2006.

6. I have already dealt with the grievance of the petitioner in relation to the allegation of defiance of order dated 10th February, 2006 in the earlier part of the order and noted that it is not necessary to precipitate the matter. For the same reason, even this petition stands disposed of, as the assurance is already given by the respondents in the earlier petition. Notice issued to the respondents stands discharged.